

REMARKS

Responsive to the Examiner's outstanding rejection and Advisory Action, applicant has amended the claims in the application to more clearly define applicant's invention and distinguish the same from the prior art of record.

Claim 1, the only independent claim in the application has been amended to clearly distinguish applicant's invention from the structure illustrated and described in the reference to Hakim 3,157,302.

No new matter has been added.

Dependent claims 3-9 have been amended as to form and not substance.

Favorable consideration of the application, as amended, is respectfully requested.

To summarize, applicant's invention is unique and novel in respect of the elevating means being utilized to overcome retention means to open a package. The Examiner has stated that the Hakim '302 reference discloses threads on a container and closure, having upper and lower surfaces that can be interpreted as being elevating means and retention means, respectively. Thus, the Examiner opines that the broad scope of retention and elevating means recited in the claims in the application anticipated by the threads in Hakim '302. In the common use of threads, as is the case in Hakim '302, the retention means is located below the elevating means. That is, the container retention means being the lower surface of the container thread and the elevating means being the upper surface of the same container thread specifically locates the elevating means above the retention means.

It is submitted that the Hakim '302 reference does show a container having the retention means above the elevating means. Claim 1 has been amended to require that the retention means be separate from and located above the elevating means on the container. The requirement that the retention means be above the elevating means clarifies applicant's invention wherein the bead 28, the retention means, is illustrated above the screw thread 9, the elevating means on the container. Since Claim 1 has been modified to limit the retention means to be above the elevating means, the applicant's structure is clearly distinguishable from Hakim '302 or any other prior art where the elevating means is below the retention means. The limitation does not introduce new matter, but rather claim 1 has been amended in a more narrow form by eliminating the words "or near" from independent claim 1 to specifically position the claimed retention means as being at the container opening. Eliminating the words "or near" does not introduce new matter. Rather, it reduces the scope of the structure as the case where the retention means being "near" the opening, is deleted

from the claim. This leaves the word “at” (the other end) as the sole location for the retention means. Both, mutually exclusive cases, “at” and “or near” were present in the original submission so they would have been presented prior to the patent search of prior art over a considerable length of time. Therefore, no new matter is being added to the claims and in fact deletion of the words “or near” narrows the scope of the independent claim. The effect of narrowing the independent claim such that it is limited to the case where the retention means is located at the container opening and the elevating means being located near the container opening causes applicant’s structure to be outside the scope of the Hakim ‘302 which has the retention means below the elevating means as is the case with all cooperating screw threads.

This stipulation that the retention means be located above the elevating means along with the limitation that the top panel top surface has a portion thereof adapted to protrude above the container opening differentiates the immediate invention from the prior art.

Since the independent Claim 1 clearly distinguishes applicant’s invention from the prior art, the Examiner’s rejection of anticipation must be reconsidered and withdrawn. And, since all of the other claims of record depend, either directly or indirectly from Claim 1, the same argument applies in respect of structural distinction.

It is submitted that the application is now in condition for allowance and an early notice thereof is respectfully requested.

Should the Examiner wish to have any further language changes considered, please contact applicant’s attorney.